

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT MAESTAS and DEPARTMENT OF THE ARMY,
PUEBLO ARMY DEPOT ACTIVITY, Pueblo, Colo.

*Docket No. 96-2001; Submitted on the Record;
Issued June 5, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in approving an attorney's fee totaling \$30,000.00.

The Board has duly reviewed the record and finds that the Office did not abuse its discretion in approving an attorney's fee.

On July 24, 1995 the Board issued a decision and order, reversing the Office's decision dated June 7, 1994, which had denied appellant's claim for wage-loss compensation beginning June 19, 1990. Beginning October 1995 the Office paid appellant wage-loss compensation through the periodic rolls. By letter dated October 26, 1995 appellant's representative requested a lump sum payment for the past five years of wage-loss compensation, and attached an itemized statement which documented the amount of work he performed and his billing rate. The statement indicated 95.8 hours of work billed at \$120.00 per hour, with 8.7 administrative hours billed at \$30.00 per hour, to equal a total amount charged of \$12,757.00.

In November 1995, appellant's representative noted that as appellant had been paid back wages in the amount of \$99,942.48, he requested the approval of fees for an additional \$17,243.00, to equal a total amount of 30,000.00, which represented 25 percent of the amount of back compensation. Appellant's representative noted that appellant had agreed to payment of the total of \$30,000.00 and attached the retainer agreement, which indicated that appellant agreed to payment of 20 percent of a settlement, or 40 percent of a settlement where there was an appeal involved. Appellant's representative maintained that the billing rate of \$120.00 per hour did not take into consideration the true value of the time and services rendered, and that he normally did not undertake complex medical/legal matters on an hourly charge but charged instead a contingency fee with a range of one third to 40 percent of any gross amount collected.

By decision dated March 11, 1996 the Office approved the initial request of fees for the amount of \$12,757.00, denying the subsequent requested amount of \$30,000.00.

It is not the Board's function to determine the fee for representative services performed before the Office. That is a function within the discretion of the Office based on the criteria set forth in 20 CFR § 10.145 and mandated by Board decisions. The Board's sole function is to determine whether the action by the Office constituted an abuse of discretion.¹ The criteria governing the approval of fees for a representative's services are provided in 20 CFR § 10.145(b) which states:

“(b) The fee approved by the Office will be determined on the basis of the actual necessary work performed and will generally include but are not limited to the following factors:

- `(1) usefulness of the representative's services to the claimant.
- `(2) The nature and complexity of the claim
- `(3) The actual time spent on development and presentation of the claim.
- `(4) The amount of compensation accrued and potential future payments.
- `(5) Customary local charges for similar services.
- `(6) Professional qualifications of the representative.”

Generally an abuse of discretion can be shown only through proof of manifest error, a manifestly unreasonable exercise of judgment, a clearly unreasonable exercise of judgment, or actions which are contrary to both logic and probable deductions from established facts² 20 C.F.R. 10.145(e)(3) excludes recognition of contingency fees.”³

In this case, the Office found that the fee of \$12,757.00 was reasonable based on the hours spent, the fairly complex nature of the case with three separate requests for hearings, and the reasonableness of \$120.00 per hour for his services and \$30.00 for the administrative services. The Office took into consideration all the factors set forth in the regulations and based on the stated regulatory provision which disallows the recognition of contingency fee agreements, it properly denied the amended request for payment based on a 25 percent of the back wages which were paid to appellant in November 1995. The Board finds therefore, that the Office did not abuse its discretion in denying the additional amount of \$17,243.00, or total of 30,000.00.

¹ *Arthur Sims*, 46 ECAB 880 (1995).

² *William F. Osborne*, 46 ECAB 198 (1994).

³ This section states that the Office will not recognize “[a]ny contract for the payment of an agreed sum of any contingent contract.” 20 C.F.R. § 10.145(e) (3).

The decision of the Office of Workers' Compensation Programs dated March 11, 1996 is hereby affirmed.

Dated, Washington, D.C.
June 5, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member